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ELEGENT TECHNOLOGIES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[San Francisco Division]

ELEGENT TECHNOLOGIES INC.,

Plaintiff,

v.

DOLBY LABORATORIES, INC.,

Defendant.

Case No.

COMPLAINT FOR VIOLATION OF SHERMAN ANTITRUST ACT SECTIONS 1 AND 2; UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ; SPECIFIC PERFORMANCE OF CONTRACTUAL OBLIGATION; DECLARATORY JUDGMENT OF PATENT MISUSE AND UNENFORCEABILITY; COMMON LAW FRAUD; AND FRAUD IN THE INDUCEMENT.

DEMAND FOR JURY TRIAL

Date of Filing: No Date Set

Plaintiff Elegend Technologies Inc. ("Elegend"), by and through its undersigned counsel, alleges as follows:

I.
INTRODUCTION AND NATURE OF ACTION

1. This action arises out of a pattern of interconnected anticompetitive actions by Defendant Dolby Laboratories, Inc. ("Dolby") described in more detail below. Through the actions challenged in the case, Dolby has illegally obtained and maintained monopoly power over the dominant method for coding and decoding compressed audio signals used in DVDs and HDTV and over the implementation of the related industry standard on which a wide variety of

COMPLAINT

23633/00402/LIT/1175464. 13Case No. _____

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DEMAND FOR JURY TRIAL

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Plaintiff Elegant Technologies Inc. ("Elegant"), by and through its undersigned counsel,
 alleges as follows:

I.
INTRODUCTION AND NATURE OF ACTION

1. This action arises out of a pattern of interconnected anticompetitive actions by Defendant Dolby Laboratories, Inc. ("Dolby") described in more detail below. Through the actions challenged in the case, Dolby has illegally obtained and maintained monopoly power over the dominant method for coding and decoding compressed audio signals used in DVDs and HDTV and over the implementation of the related industry standard on which a wide variety of

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1 consumer products are based. Dolby's market dominance is based in large part on the adoption of
2 its patented methods in the industry standard known as ATSC A/52. The decision to base the
3 A/52 standard on Dolby's patented methods was based expressly on its promise to license its
4 patents under reasonable terms and conditions that are demonstrably free of any unfair
5 discrimination.

6 2. In deciding to develop a product for playing DVDs and HDTV, Elegent was aware
7 of the industry standard and relied on the assumption that it would be able to obtain a license to
8 any necessary patents under reasonable terms and conditions that are demonstrably free of any
9 unfair discrimination. Subsequent events show that Dolby never intended to abide by its promise.
10 Its mandatory license includes a number of requirements that are either independent violations of
11 the antitrust laws or misuse of Dolby's patents, or both. Because a company must have a license
12 for Dolby's patents to utilize the industry standard necessary to decode standard DVDs and
13 HDTV broadcasts, the license is an essential facility. By denying Elegent a license for its patents
14 and the ability to implement the industry standard in its products, Dolby has not only harmed
15 Elegent, but also has harmed competition by denying consumers access to a new and convenient
16 technology.

17 3. Elegent seeks both affirmative monetary and injunctive relief under state and
18 federal law and a declaratory judgment of patent misuse as an affirmative defense against any
19 infringement action that Dolby might bring against Elegent. Elegent seeks damages and
20 injunctive relief for violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2;
21 actual and punitive damages for fraud; injunctive relief, restitution and disgorgement of benefits
22 for Dolby's unfair competition in violation of California Business and Professions Code
23 §§ 17200, *et seq.*; specific performance of Dolby's promise to license its patents under reasonable
24 terms and conditions that are demonstrably free of any unfair discrimination; and a declaratory
25 judgment finding that Dolby patents are unenforceable because of Dolby's misuse and that Dolby
26 is estopped from suing Elegent for infringement for actions taken in reliance on Dolby's promises
27 to the standard-setting organization.
28

II.
JURISDICTION

4. This action arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; the Declaratory Judgment Act, Title 28 of the United States Code §§ 2201 and 2202; Title 35 of the United States Code; and California Business & Professions Code §§ 17200, *et seq.*; and the common law of California.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, 1367 and 2201.

6. This Court has personal jurisdiction over Dolby because a substantial part of the conduct that gave rise to this action occurred in the Northern District of California. Dolby has purposefully directed its unfair patent licensing program toward Elegent, a resident of California; the cause of action herein arises from Dolby's forum-related contacts; Dolby has principal offices in California, including in San Francisco and Brisbane, California, both within the Northern District of California; and exercise of personal jurisdiction by this Court is reasonable and comports with fair play and substantial justice.

7. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391, because defendant Dolby transacts business and is found within this District.

III.
INTRADISTRICT ASSIGNMENT

8. Pursuant to Civil Local Rule 3-5(b) and 3-2(d), the intradistrict assignment to the San Francisco Division of the U.S. District Court for the Northern District of California is appropriate as the action or a substantial part thereof arises from Dolby's actions in San Francisco County.

IV.
PARTIES

9. Elegent is a corporation organized under the laws of the state of California, with its principal place of business located in Fremont, California. Elegent is a nascent private software company developing software solutions that extend the capabilities of personal computers and

1 other consumer electronic devices.

2 10. One of Elegent's innovative products is "etDVD" – an incredibly efficient
3 software program stored in the persistent flash memory of a personal computer (or other
4 consumer electronic device) that allows the personal computer to operate as an instant-on DVD
5 player and television. With Elegent's etDVD software, a consumer is able to watch a DVD
6 movie or TV program on his or her computer without having to boot up the operating system or
7 access the hard drive. etDVD currently plays DVD videodiscs and displays analog television and
8 will soon display digital and high definition television (HDTV) programs. For a nominal cost, a
9 consumer can thus have his or her PC double as a home entertainment center. Over time,
10 Elegent's etDVD software could become a ubiquitous standard feature built into millions of
11 personal computers. Unfortunately, unless this Court stops Dolby's wrongful acts, consumers
12 may never have the opportunity to benefit from Elegent's innovative products.

13 11. Upon information and belief, Dolby is a corporation organized under the laws of
14 the state of California, with principal places of business in California, including locations in San
15 Francisco, California, and Brisbane, California, both within the Northern District of California.

16 12. Dolby is a multinational corporation that develops audio signal processing systems
17 and manufactures professional equipment to implement these technologies in the motion picture,
18 broadcasting, and music recording industries. Dolby also licenses these technologies for use in
19 the consumer electronics industry. Dolby owns certain patents on methods of coding, decoding,
20 and compressing audio signals while reducing unwanted noise. Because the A/52 standard has
21 been based in part on methods covered by Dolby's patents, it is impossible to use the
22 A/52 standard without also using Dolby's patented methods.

23 V. 24 **BACKGROUND**

25 **A. Incorporation of Dolby's Technology Into the Industry Standard**

26 13. A DVD – or digital videodisc – is a type of optical disk technology commonly
27 used as a medium for digital representation of movies and other multimedia presentations.
28 A DVD can hold a full-length film of high quality video and audio. Consumers can play DVDs

1 on DVD players ("DVD-Video") or on a personal computer ("DVD-Rom"). The audio portion of
2 virtually all consumer DVDs available now is encoded using an industry standard known as A/52.
3 As a result, all products that play DVDs must use the A/52 standard to decode the signal and
4 produce the sound for the consumer.

5 14. The Advanced Television Systems Committee, Inc., ("ATSC") is an international,
6 non-profit organization formed to develop voluntary standards for digital television. The ATSC
7 has approximately 140 member organizations representing the broadcast, broadcast equipment,
8 motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries.

9 15. When developed properly and with appropriate safeguards, standards can enhance
10 competition and efficiency by allowing a large number of different manufacturers to produce
11 products that will work together. As this case illustrates, however, standards also have the
12 potential to magnify the market power of certain companies.

13 16. One of the key standards developed by the ATSC was the Digital Television
14 Standard for high-definition television (the "HDTV standard"), which specifies a system designed
15 to transmit high-quality video and audio. In 1995, the FCC adopted the HDTV standard as
16 mandatory.

17 17. The HDTV standard incorporates the A/52 Digital Audio Compression ("AC-3")
18 Standard as the required audio coding format. By incorporating the A/52 coding format, the
19 HDTV standard employs an audio compression system, which is interoperable across many
20 different media, and is appropriate for use in a multitude of applications. Because the FCC made
21 the HDTV standard mandatory, the A/52 standard is now the required audio encoding format
22 used in HDTV broadcasts. A/52 is also the standard audio encoding format for DVDs. Proper
23 playback of HDTV broadcasts or DVD soundtracks require a decoder that adheres to the
24 A/52 standard.

25 18. Like most standard-setting bodies, to ensure an open playing field for all who
26 desire to implement the standard, ATSC has a patent policy to which all contributors must agree.
27 A true and correct copy of the ATSC Patent Policy is attached hereto as Exhibit 1. ATSC's
28 patent policy states:

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1 2. Statement from Patent Holder

2 Prior to approval of such a proposed ATSC Standard, the
3 ATSC shall receive from the patent holder (in a form approved by
4 the ATSC Board of Directors) either: assurance in the form of a
5 general disclaimer to the effect that the patentee does not hold and
6 does not anticipate holding any invention whose use would be
7 required for compliance with the proposed ATSC Standard or
8 assurance that:

9 (a) A license will be made available without
10 compensation to applicants desiring the license for the purpose of
11 implementing the standard, or

12 (b) A license will be made available to applicants under
13 reasonable terms and conditions that are demonstrably free of any
14 unfair discrimination.

15 This assurance, along with a statement of the basis for considering
16 such terms and conditions reasonable and free of any unfair
17 discrimination, shall be submitted to the ATSC Board of Directors
18 for review.

19 19. In order to have its coding scheme, known as AC-3, considered for inclusion in the
20 standard, Dolby committed to the ATSC that it would license its patents "under reasonable terms
21 that are demonstrably free from any unfair discrimination." A true and correct copy of Dolby's
22 Patent Statement to the ATSC is attached hereto as Exhibit 2.

23 20. The AC-3 format developed by Dolby Laboratories was but one of several
24 possible audio encoding schemes available for inclusion in the HDTV standard. Dolby convinced
25 the ATSC to incorporate AC-3 into the HDTV standard by committing to the ATSC patent policy
26 and thus ensuring that the standard would be open to be implemented by a wide range of
27 companies.

28 **B. Dolby's Refusal to License Its Patents to Elegent**

 21. Dolby has failed to keep the promise that it made to the ATSC. Despite Elegent's
repeated requests, Dolby has refused to make its patents available to be licensed under reasonable
and nondiscriminatory terms. On information and belief and based upon its subsequent conduct,
Dolby never intended to license its patents on the terms it promised.

 22. Dolby maintains a two-tier license structure, composed of Implementation
Licenses and System Licenses. A true and correct copy of Dolby's Implementation License and

1 System License are attached hereto as Exhibits 3 and 4, respectively. As described by Dolby, its
2 Implementation License typically grants permission to take a core licensed technology, such as
3 Dolby Digital (Dolby's trademark for what was supposed to be the open A/52 standard), and
4 develop an integrated circuit (IC), a hardware module (subsystem), or a software algorithm that
5 achieves the key functions often tailored for specific product applications. Dolby requires that
6 "component developers" – companies that develop, for example, chips or software – obtain an
7 Implementation License and only sell components to entities that have taken a System License.
8 A System License grants a company permission to manufacture and sell products to consumers
9 containing Dolby's licensed technologies. Dolby requires manufacturers of consumer products or
10 personal computers who want to obtain a System License to only buy components from suppliers
11 who also have an Implementation License from Dolby. Because Dolby requires that all
12 Implementation Licensees only contract with System Licensees, and vice-versa, Dolby uses its
13 two-tier licensing structure to foreclose opportunities to any potential competitors in either
14 market.

15 23. In order to operate, Elegent's etDVD software needs to decode A/52 encoded
16 DVD audio tracks. Thus, Elegent sought a license from Dolby for the patents required to
17 implement the standard.

18 24. Elegent sought a license for the patents pursuant to the terms of the ATSC, but
19 Dolby refused. Dolby indicated that it would only agree to license its patents if Elegent also
20 licensed Dolby's implementation, including Dolby's own software and "know how." Elegent
21 explained that it had its own implementation of the A/52 standard for etDVD and had no need for
22 Dolby's and that the small size and computational efficiency of Elegent's implementation
23 provided a unique competitive advantage.

24 25. After Elegent's last request for a license to the patents alone under the "reasonable
25 terms and conditions that are demonstrably free of any unfair discrimination" required by the
26 ATSC patent policy, Dolby responded with a threatening e-mail accusing Elegent of patent
27 infringement. Dolby acknowledged that it is required to license its AC-3 technology on
28 "reasonable and nondiscriminatory terms for DVD and ATSC applications," but again refused to

license its patents under such terms. Instead, in the e-mail, Dolby demanded that Elegend provide Dolby with a complete accounting of: (1) all manufacture, use and distribution by or for Elegend of any and all products utilizing any Dolby proprietary technology; and (2) a complete description of each type of such product (model name, feature set, number of output channels, configuration, etc.); and (3) the quantity of each type (including all copies made); and (4) all recipients of such product and their contact information (with quantity and type breakdown for each). In context, Dolby's refusal to license and the demands that it made upon Elegend indicate an intent by Dolby to sue rather than to negotiate. As a result, Elegend has a reasonable anticipation of infringement litigation by Dolby. This dispute with Dolby is having a seriously adverse effect on Elegend's ability to develop its business.

26. Dolby's bellicose response and forced bundling of unpatented and unwanted technology is contrary to its commitments to the ATSC. These onerous terms simply do not resemble the "reasonable terms and conditions that are demonstrably free of any unfair discrimination" terms required by the ATSC.

27. Not only did Dolby fail to honor its commitment to the ATSC in exchange for the incorporation of AC-3 into the standard, it appears that Dolby never intended to keep the promise of licensing its patents "under reasonable terms and conditions that are demonstrably free of any unfair discrimination." Rather, on information and belief, Dolby defrauded the ATSC into incorporating the AC-3 format into the standard without any intention of making its patents available under reasonable and nondiscriminatory terms, so that others, besides Dolby, could implement what was supposed to be an open standard.

C. Dolby Has Breached Its Promise to the ATSC

28. Dolby has breached its promise to the ATSC in at least three fundamental ways.

29. First, despite requests from Elegend and perhaps others, Dolby has refused to license its patents. Rather, Dolby has insisted upon granting licenses for its patents only if the licensees also agree to base their use of the patented methods on Dolby's particular implementation, including source code and system requirements and other know-how. Dolby's requirement is inconsistent with normal industry practice. Indeed, the video standards established

1 by ATSC are based on certain patented methods. The owners of those patents license the patents
2 and allow the licensees to develop their own implementations.

3 30. Elegent does not need or want Dolby's implementation. Elegent's implementation
4 is smaller and more efficient than the competition. In addition, given the structure of the overall
5 licensing fees, which are predominantly for Dolby's implementation and other non-patent
6 intellectual property, Elegent cannot afford the only license that Dolby offers. Elegent could,
7 however, afford to license the patents for the royalties that are specifically attributed to the
8 patents.

9 31. Second, the license demanded by Dolby is not "demonstrably nondiscriminatory"
10 as Dolby promised it would be. To the contrary, it is demonstrably discriminatory under well-
11 established antitrust principles. The required license payments are based on a quantity discount
12 schedule that dramatically favors the largest users and disadvantages the smallest ones. The
13 second tier of Dolby's licensing scheme requires per unit royalties for its bundled implementation
14 that begin at \$2.08¹ per unit audio channel for volumes up to 10 thousand units per quarter per
15 system manufacturer and drops off as per quarter shipments reach a million units. To fully
16 implement the A/52 standard requires six audio channels and thus a per-system implementation
17 royalty of \$12.48. The high initial per-unit rate for Dolby's unwanted implementation is a
18 prohibitive barrier to entry for a new entrant with a low cost, software-only implementation like
19 Elegent. In countries in which Dolby holds relevant patents, a licensee pays an additional
20 nineteen cents per audio channel capped at \$.57. Thus, the established patent royalty is a small
21 fraction of the unwanted but force-bundled implementation royalty. In short, the price paid "per
22 unit" by a small user, like Elegent, is far more than the price paid by the largest users, and the
23 difference is even more striking when the licensee does not need and does not want anything
24 more than the right to use the patented methods.

25 32. Third, as discussed below, the licensing arrangement demanded by Dolby involves
26 practices that are both independent antitrust violations and well-established misuse of patent
27 rights. Dolby's illegal business practices did not stop with its fraud upon the ATSC and its

28 ¹ The explicit royalties in Exhibit 4 require a yearly adjustment based on the current consumer price index. Rates specified in this Complaint reflect those adjustments.

breach of contract. After establishing its technology as part of the standard, Dolby set up a licensing structure that is itself illegal and structured to perpetuate Dolby's monopoly in the current standard and any improvements to that standard. To demand a license with those material defects cannot be reasonable. To the contrary, such requirements are clear examples of patent misuse.

D. Dolby Requires Illegal Tying

33. Dolby illegally bundles its Implementation License with the license for its patents. As described above, Dolby conditions the license for its patents upon a licensee's agreement to also license its implementation. By bundling its patents with unwanted software and non-patent intellectual property, Dolby misuses its patents and violates the antitrust laws and its commitment to the ATSC.

E. Dolby Requires Illegal Exclusive Grant-Backs

34. Dolby's Implementation License contains an illegal grant-back provision. The license requires that any "Advancements" developed by the licensee must be exclusively licensed to Dolby. Dolby defines the Advancements to which it would gain exclusive rights to be modifications to its Audio Technology which "either (a) expand the applications to which the Audio Technology may be put, or (b) which would, if implemented replace or displace the Audio Technology in one or more commercial markets material to the Audio Technology." Dolby's exclusive grant-back is designed to discourage competitive innovation and insure the entrenchment of Dolby's monopoly. In light of Dolby's market power and the other circumstances of this case, this license requirement is an unreasonable and illegal restraint of trade in violation of both Section 1 and Section 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

F. Dolby Requires Royalty Payments for Expired Licenses

35. Dolby's license requires the payment of fees for both patented and unpatented intellectual property on the same basis so long as one patent is still in effect somewhere in the world. The result is that Dolby is continuing to extract payments under its patent monopolies after the patents that justify the payments have expired. Dolby also requires the payment of its implementation royalties for sales made in countries in which it has no patents. These licensing

arrangements wrongfully extend the scope of the patent protection and are acts of patent misuse.

G. Relevant Markets

36. This case involves several interrelated relevant economic markets.

37. There is a relevant product market for methods of audio compression and coding (“audio methods market”). Dolby’s AC-3 coding scheme is one such method. The relevant geographic market is the United States. By virtue of its patents and the incorporation of its patented AC-3 coding scheme in the A/52 standard, Dolby has monopoly power in this relevant market.

38. There is a relevant product market for implementations of the A/52 standard (“audio implementation market”). The relevant geographic market for this market is the United States. The standard is a basic roadmap that all companies must follow if their products are to meet the standard. However, the particular ways of implementing the standard can vary and are a proper subject of competition. Implementations of the standard can either be licensed to other companies to develop products using the standard or, as the case of Elegent, used by the company developing the implementation to develop products using the standard. Dolby has foreclosed that competition by requiring licensees of its patents to use its basic implementation as the basis for developing additional products based on the A/52 standard. As a result of its illegal actions, Dolby either has monopoly power in this relevant market or has a dangerous probability of achieving such power.

39. There is a nascent relevant product market for software for personal computers and laptops using the A/52 standard in software that does not depend on the computer’s hard drive to play DVDs and HDTV (“instant-on software market”). Such software would offer consumers benefits not available with existing implementations. Although this market is separate from the larger current market for conventional implementations of the A/52 standard for DVDs, the development of software like Elegent’s would provide an additional competitive threat to companies using existing implementations.

H. Harm to Competition and Antitrust Injury

40. Dolby has hijacked what was supposed to be an open standard. As described

1 above, because Dolby was successful in convincing the ATSC to adopt Dolby's AC-3 coding
2 scheme as the A/52 standard, AC-3 is now the standard in the industry. In fact, Dolby proudly
3 asserts on its website that "[e]very DVD player sold worldwide incorporates Dolby Digital
4 decoding."

5 41. After inducing the ATSC into incorporating AC-3 into the standard, Dolby
6 promulgated an illegal licensing scheme to prevent competitors from developing alternative
7 implementations of the standard. Dolby defrauded the ATSC into making it a monopolist, and
8 now is imposing impossible licensing terms in order to maintain and expand that monopoly
9 beyond the scope of its patents and in ways contrary to its commitment to the ATSC.

10 42. By illegally bundling its implementation with the required patents, Dolby has
11 leveraged the standard into a second monopoly over the implementation of the standard. This
12 illegal bundling has foreclosed all alternative implementations of the standard and retarded
13 innovation that would benefit consumers. In essence, Dolby has taken what was supposed to be
14 an open standard and has converted it into a proprietary product controlled by Dolby.
15 Consequently, innovators like Elegend are prevented from bringing better implementations and
16 new products to the market.

17 43. Further, by placing its "Dolby Digital" trademark on every implementation, Dolby
18 further entrenches its monopoly in this second market and flaunts its control over what was
19 supposed to be an open industry standard.

20 44. The exclusive grant-back of all advancements on any technology related to the
21 standard or Dolby's patents eliminates the incentive of licensees to develop valuable
22 improvements and ensures further entrenchment and extension of Dolby's monopoly position
23 over implementations of the current standard and any likely future standards. With its illegal
24 exclusive grant-back requirement, Dolby suppresses its licensees' incentive to innovate by
25 appropriating any innovations that its licensees may create that could undermine its dominant
26 market position.

27 45. Through its licensing requirements, Dolby requires licensees to pay royalties for
28 patents that have expired or will expire before the end of the license. The required license fees do

not change despite the reduction in the number of patents in the relevant jurisdiction. This license requirement in effect forces licensees to pay for patents after they have expired. This practice constitutes a misuse of the patents. Dolby also requires, as a condition for licensing its United States patents, that a licensee pay implementation royalties for sales in all countries, including those in which Dolby has no patents. This too is patent misuse.

46. Elegent and other companies like it are consumers of the A/52 standard. The methods embodied in the A/52 standard are necessary inputs to the software designed by Elegent. As a result, like any consumer of a monopolized product, Elegent suffers antitrust injury when Dolby gains additional market power and then uses that power to exploit its customers. A core purpose of the antitrust laws is to protect consumers against monopolies and to assure to them the benefits of competition. The harm suffered by Elegent is of the type that the antitrust laws seek to avoid and flows directly from Dolby's violation of those laws.

47. Dolby's actions also harm the ultimate consumers of products utilizing the A/52 standard. At present Elegent is effectively being denied the ability to sell its product. Thus consumers are being denied access to a new and promising software product. Even if Elegent were somehow able to afford a license to the Dolby implementation that Elegent neither needs nor wants, the dramatic volume discount favoring large users would mean that consumers would have to pay a disproportionately high price for Elegent's product.

VI. CLAIM I

VIOLATION OF SHERMAN ACT § 1 (TYING) AND MISUSE

48. Elegent incorporates herein by reference the allegations of paragraphs 1 through 47 of this Complaint.

49. There are separate markets for methods of audio compression and coding and implementations of the A/52 standard. There is separate demand for those products. Some companies like Elegent prefer simply to license the patented methods. Other companies prefer to license a complete implementation of the type now offered by Dolby, including the possibility of using the Dolby trademarks.

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50. Dolby has required and coerced anyone who wants to license its audio compression and coding patents (the tying product) to also license its implementations of the A/52 standard (the tied product).

51. Dolby has market power over the audio technology covered by its patents and incorporated in the A/52 standard.

52. A substantial amount of commerce is involved in the licensing agreements mandated by Dolby and challenged in this case.

53. The effect of Dolby's tying arrangements has been to substantially harm competition in the market for audio technology software. Indeed, as a result of the illegal tying arrangements, Dolby has succeeded in extending its monopoly power from its patented audio methods to its implementations of the A/52 standard. In the absence of the illegal tie-ins, other companies, including Elegent, would provide separate and competing audio technology software to implement the A/52 standard. Because of Dolby's refusal to license its patents without its implementation of the A/52 standard, Elegent and other companies are foreclosed from competing in that market.

54. The purpose and effect of Dolby's tying are to foreclose entry of competitors into the audio implementation market, thereby restraining competition and limiting the choices of consumers.

55. Dolby's tie-ins are per se violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

56. Alternatively, Dolby's tie-ins are unreasonable and therefore violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

57. Elegent has suffered antitrust injury as a potential competitor that is effectively foreclosed from competing with Dolby in the tied product market.

VII. CLAIM II

VIOLATION OF SHERMAN ACT § 2 (MONOPOLIZATION AND ATTEMPTED MONOPOLIZATION)

58. Elegent incorporates herein by reference the allegations of paragraphs 1 through

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1 57 of this Complaint.

2 59. Dolby has monopolized the market for audio methods beyond the scope provided
3 for by patent laws by fraudulently inducing the standard-setting organization into adopting
4 Dolby's patented audio methods as the industry standard. Once Dolby secured its monopoly by
5 defrauding the standard-setting organization, it attempted to further expand its monopoly to areas
6 beyond the scope of its patents by using its existing power to require all licensees to agree to
7 illegal grant-backs. The exclusive grant-backs operate as a disincentive for licensees to create
8 improvements on the patented technology. Any company that wants to compete in any market
9 involving DVDs or HDTV or the devices that can play them must have a license from Dolby.
10 Accordingly, by removing its licensees' incentives to create better software, Dolby eliminates the
11 most likely sources of technological challenge to its monopoly position and thus insures that
12 competition is foreclosed in the audio methods market.

13 60. As to the market for audio implementations, Dolby has willfully engaged in a
14 course of conduct, including tying, in order to obtain a monopoly in that market. Dolby already
15 possesses monopoly power in the market for audio methods, and, through the anticompetitive
16 conduct described herein, Dolby has or has attempted to expand that monopoly into the market
17 for audio implementations. Dolby has a significant share of the market for audio implementations
18 and has a dangerous probability of success in monopolizing that market. Dolby has acted with a
19 specific intent to monopolize, and to destroy effective competition in, that market.

20 61. Competition in the relevant markets has been restrained by Dolby's
21 anticompetitive and unfair licensing practices alleged herein. Dolby has injured competition in
22 the relevant markets in violation of Sherman Act § 2, 15 U.S.C. § 2, in that, among other things,
23 market entry has been foreclosed and consumer choice has been diminished in both markets.

24 62. Elegent has suffered antitrust injury as a direct result of Dolby's actions in that
25 Elegent is unable to compete in the audio implementation and instant-on software markets as a
26 proximate result of Dolby's refusal to license its patents on reasonable and nondiscriminatory
27 terms.

28
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**VIII.
CLAIM III**

**VIOLATION OF SHERMAN ACT SECTION 2
(DENIAL OF ESSENTIAL FACILITY)**

63. Elegend incorporates herein by reference the allegations of paragraphs 1 through 62 of this Complaint.

64. Dolby has monopoly power over the relevant product market for audio methods in the United States by virtue of its patents and their incorporation in the A/52 standard.

65. A license for Dolby's patents is essential for any company, like Elegend, that wishes to compete in a product market that is based on the A/52 standard.

66. Elegend cannot duplicate the essential facility controlled by Dolby.

67. Dolby has denied Elegend a license to its patents. The license that Dolby has offered including both the patents, Dolby's implementation of the A/52 standard, and other Dolby intellectual property does not allow Elegend to compete in its markets.

68. As result of Dolby's denial of an essential facility, Elegend has suffered antitrust injury as a result of being effectively barred from competing with Dolby for implementations of the A/52 standard and from introducing a new product in the instant-on software market that would provide great consumer benefits.

**IX.
CLAIM IV**

**VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
CODE SECTION 17200, ET SEQ.**

69. Elegend incorporates herein by reference the allegations of paragraphs 1 through 68 of this Complaint.

70. In its efforts to strong-arm Elegend into taking a license to Dolby's non-patented technology, Dolby has engaged in conduct that constitutes an unlawful, unfair and/or fraudulent business practice within the meaning and spirit of Business and Professions Code § 17200, to-wit:

a. Dolby's deliberate misuse of the patents-in-suit, a cognizable wrong under the patent laws of the United States, constitutes an unlawful, unfair and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

COMPLAINT

b. Dolby's acts of fraud upon the standard-setting organization and upon Elegend constitute an unlawful, unfair and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

c. Dolby's conduct also threatens to harm consumers by foreclosing competition in the markets and thus diminishing consumer choices for audio implementations and instant-on software. Such conduct constitutes unlawful, unfair and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

d. As described above, Dolby's conduct also violates the federal antitrust laws, in that such conduct restrains trade by attempting to assert a monopoly over technologies to which the patents-in-suit do not apply. Such conduct constitutes unlawful, unfair and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

e. To the extent that Dolby's conduct challenged herein does not violate the antitrust laws, it involves the same policies as the antitrust laws and therefore constitutes unlawful, unfair, and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

f. Further, Dolby's conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices" in or affecting commerce. Such conduct violating Section 5(a) of the FTC Acts constitutes unlawful, unfair and/or fraudulent business act or practice in violation of Section 17200, *et seq.*

71. Pursuant to Business and Professions Code § 17203, injunctive relief is required to put a stop to Dolby's unlawful, unfair and/or fraudulent business practices. Elegend has no adequate remedy at law and is being irreparably harmed by Dolby's acts of unlawful, unfair and/or fraudulent competition, and such harm will continue unless Dolby is enjoined by the Court.

72. Elegend is entitled to restitution and/or disgorgement of all benefits received by Dolby pursuant to or in connection with its unlawful, unfair and/or fraudulent business practices, as alleged herein.

**X.
CLAIM V**

SPECIFIC PERFORMANCE OF CONTRACTUAL OBLIGATION

73. Elegend incorporates herein by reference the allegations of paragraphs 1 through 72 of this Complaint.

74. Dolby agreed with the standards-setting organization that it would license to all other industry participants all of the required patents under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

75. Dolby's agreement was supported by adequate consideration and was fair, just and reasonable.

76. Elegend is a third-party beneficiary of Dolby's agreement.

77. Dolby breached its agreement by refusing to license to Elegend the required patents under reasonable terms and conditions that are demonstrably free of any unfair discrimination.

78. Elegend has been damaged, and is threatened by further damage, by Dolby's refusal to license to Elegend. Elegend has no adequate remedy at law for such damages.

**XI.
CLAIM VI**

**DECLARATORY JUDGMENT OF PATENT MISUSE
AND UNENFORCEABILITY**

79. Elegend incorporates herein by reference the allegations of paragraphs 1 through 78 of this Complaint.

80. Elegend alleges that the required patents are unenforceable because of Dolby's misuse of the same through its unfair and anticompetitive licensing program. Dolby has misused its audio methods patents by unfairly refusing to license the patents in a non-discriminatory way on reasonable terms and conditions despite its commitment to the standard-setting organization.

81. Dolby has further misused the patents by forcibly bundling its patents with unpatented and unwanted technology.

82. Dolby has further misused its patents by including illegal grant-back provisions in its licenses.

84. Elegend seeks a judgment declaring that the claims of the patents are unenforceable.

COMMON LAW FRAUD

86. Dolby made a false representation of a material fact when it promised the ATSC, the public, and all companies that utilize the A/52 standard in their products that it would make licenses to its patents available under reasonable terms and conditions that are demonstrably free of any unfair discrimination if the ATSC incorporated Dolby's patented AC-3 encoding scheme as the standard and companies developed products utilizing that standard.

88. Elegend is a company that utilizes the A/52 standard in its product and thus is a member of the class that Dolby intended to deceive (Cal. Civ. Code § 1711).

90. Elegend actually and justifiably relied upon Dolby's representation that it would make its patents available to be licensed under reasonable terms and conditions that are demonstrably free of any unfair discrimination. In reliance on Dolby's representation, Elegend

1 developed etDVD, which utilizes the A/52 standard.

2 91. Knowing that the ATSC incorporated Dolby's patents into the standard and that
3 Elegend has developed etDVD in reliance on Dolby's representation, and that Elegend must obtain
4 a license to Dolby's patents to sell etDVD, Dolby now refuses to license its patents to Elegend on
5 reasonable and nondiscriminatory terms and instead attempts to strong-arm Elegend into licensing
6 its unwanted implementation.

7 92. Elegend has been damaged by Dolby's false representation because it was induced
8 into developing etDVD with the understanding that Dolby would license its patents under
9 reasonable terms and conditions that are demonstrably free of any unfair discrimination. It
10 invested substantial amounts of time and money into the development of etDVD and is now
11 foreclosed from selling its product due to Dolby's refusal to license its patents on reasonable and
12 nondiscriminatory terms.

13 **XIII.** 14 **CLAIM VIII**

15 **FRAUD IN THE INDUCEMENT**

16 93. Elegend incorporates herein by reference the allegations of paragraphs 1 through
17 92 of this Complaint.

18 94. The apparent consent of the ATSC to its contract with Dolby to incorporate
19 Dolby's patented AC-3 coding scheme as the standard was not real, mutual or free in that it was
20 obtained through fraud, as herein alleged.

21 95. Dolby, knowing the representations to be false and with the intent to deceive the
22 ATSC and to induce it into incorporating Dolby's patented AC-3 coding scheme in the standard,
23 falsely and fraudulently represented to the ATSC that it would license its patents under
24 reasonable terms and conditions that are demonstrably free of any unfair discrimination if the
25 ATSC would incorporate its patented coding scheme as the standard.

26 96. Dolby's representation was in fact false, because Dolby made the promise with the
27 intention of not performing it, and with the intent to induce the ATSC to rely on Dolby's
28 statement.

1 Dolby pursuant to or in connection with its unlawful, unfair and/or fraudulent business practices.
 2 in an amount to be proven at trial, but in excess of the jurisdictional minimum of this Court,
 3 arising from Dolby's business practices;

4 E. As to Claim V: An order that Dolby specifically perform its contractual obligation
 5 to ATSC to which Elegend is a third party beneficiary by granting Elegend a license to all its audio
 6 methods patents required to implement the A/52 standard under reasonable terms and conditions,
 7 and without conditioning such license upon the licensing of Dolby's implementation;

8 F. As to Claim VI: A declaration that the patents-in-suit are unenforceable due to
 9 Dolby's acts of patent misuse until such time as the Court determines that misuse has been
 10 purged;

11 G. As to Claim VII: Compensatory damages and punitive damages in an amount
 12 necessary to punish Dolby;

13 H. As to Claim VIII: Restitution and punitive damages in an amount necessary to
 14 punish Dolby.

15 I. A declaration that this case is exceptional under 35 U.S.C. § 285 and an award of
 16 Elegend's attorneys' fees, expenses, and costs in this action; and

17 J. Such other and further relief as the Court may deem just and proper.
 18

19 Dated: October 13, 2003

FENWICK & WEST LLP
 J. DAVID HADDEN

21
 22 By: 
 23 J. David Hadden

24 Attorneys for Plaintiff
 25 ELEGENT TECHNOLOGIES INC.
 26
 27
 28

JURY DEMAND

Plaintiff Elegend demands a jury trial as to all issues so triable in this action.

Dated: October 13, 2003

FENWICK & WEST LLP
J. DAVID HADDEN

By: 

J. David Hadden

Attorneys for Plaintiff
ELEGENT TECHNOLOGIES INC.

FENWICK & WEST LLP
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MOUNTAIN VIEW